

BOARD OF FUNERAL DIRECTORS AND EMBALMERS
TITLE 4, CHAPTER 12, ARTICLES, 1, 2, 3, 4, 5, 6
2016 FIVE YEAR REVIEW REPORT

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Five-Year-Review Overview

The Arizona Board of Embalmers was created by the legislature in 1909 to establish standards for and oversight of embalmers. In 1945, the legislature changed the title to the Board of Funeral Directors and Embalmers (Board) and expanded the Board's statutory authority to include individuals and funeral establishments providing goods and services. The Board adopted its first rules in 1945 and amended the rules in 1981. In 1985, in response to complaints regarding charging practices of funeral providers, the Federal Trade Commission promulgated federal regulations governing funeral practices. In 1985, The Arizona legislature also enacted legislation that required the Board to make rules that are at least as stringent as the Federal Trade Commission's regulations. In 1998, the Arizona legislature made significant changes to the Board's statutory authority. In 2001, the Board amended its application and time-frame rules in Article 2 consistent with the statutory changes. In March 2002, the Board conducted a five-year-review of its rules, which was approved by GRRC in March 2002. As a result of the March 2002 five-year-review, the Board amended the following Article 1 rules, which became effective April 2004: definitions, time-frames- enforcement advisory committee, investigation procedures, informal interview, hearing procedures, and rehearing or review of decision. In the same rulemaking the Board made new rules in Article 2 for reinstatement, application for a cremationist license, renewal of license, registration, or endorsement. The Board also amended its continuing education requirements in Article 4. Effective October 1, 2005, the Board added a new rule for inspection procedures in R4-12-120. On November 9, 2014, new rules became effective for Article 6, Cremation and Cremation Regulation. In the rulemaking the Board amended definitions in R4-12-101, repealed six rules in Article 6, and amended four rules in Article 6.

The Board intends to amend its Article 3, Regulatory Provisions, and Article 5, Prearranged Funeral Agreements rules and has begun seeking input from those who will be affected by the rules. The Board hopes to amend its Article 3 rules in 2017 and begin working on its Article 5 rules in 2018.

The Board conducted a five-year-review that was approved by GRRC on February 7, 2012. The analysis of the rules that was performed at that time is consistent with the current analysis and much of the substance in this report, with updates, comes from the December 2012 report.

Information that is identical for all of the rules

The following information is the same for all of the Funeral Board rules:

1. **Authorization of the rule by existing statutes:**

All of the rules have general authority under A.R.S. § 32-1307(A)(5). Article 5 rules have general authority under A.R.S. § 32-1391.01(A). Specific authority is stated in the applicable rule.

7. **Written criticisms of the rules received in the last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods:**

The Board has not received any written criticisms of the rules in the last five years.

8. **Comparison of the current economic, small business, and consumer impact statement:**

Except as otherwise stated and as anticipated by the Board upon promulgation of the rules, the rules have had minimal economic impact on the Board, other state agencies, private entities, small businesses, and consumers. When economic impact is discussed, minimal means less than \$1,000, moderate means \$1,000 to \$10,000, and substantial means more than \$10,000.

R4-12-311 and R4-12-312 became effective on June 16, 1981. Because R4-12-311 contains requirements for embalming, the economic impact ranges from minimal to moderate on embalmers or funeral establishments, depending on the extent to which the embalmers or funeral establishments meet the requirements before licensure. Also, because R4-12-312 is discretionary, the equipment and sanitation cost will vary, depending on what equipment the funeral establishment chooses to maintain in the preparation room. The economic impact statement related to these rules is not available.

R4-12-302 and R4-12-303 became effective on January 12, 1985. When R4-12-302 was first promulgated, the Board thought funeral establishments would self-enforce their own practices, which would decrease Board costs for investigations. The number of complaints to the Board about funeral practices has steadily increased in proportion to the number of deaths. In 1994 to 1990, the Board received approximately 50 to 60 complaints a year. From 1993 to 1996, the Board received approximately 70 to 100 complaints a year. From 1984 to 1990, the Board retained an investigator on a contract basis and as needed basis. Because the number of complaints was increasing, the Board hired a full-time investigator in 1998, resulting in higher costs to the Board than anticipated at the time of promulgation of the rule. In 2006, the Board employed a full-time investigator and compliance officer. However, due to budget constraints, the Board was unable to retain both positions and currently has one full-time compliance administrator who is responsible for inspections, renewals, continuing education compliance and FTC compliance. In 2011, the Board conducted 75 funeral establishment inspections and 25

crematory inspections. In 2015, the Board conducted 49 funeral establishment inspections and 21 crematory inspections. The Board still believes the ultimate beneficiary of the rule to be the consumer because of the elimination of hidden charges, such as cash advance markups and the ability to choose less expensive funeral items. The goal of the rule was to prevent high pressure sales. As anticipated by the Board, the costs savings to a consumer range from minimal to moderate, depending on the cost of the cash advance item. The economic impact statement related to the rules is not available.

When the Board promulgated R4-12-303, the Board's goal was to save consumers money because the rule requirements would eliminate misunderstandings and deter purchases of unnecessary goods and services. The Board determined the savings to consumers could be substantial because many of the goods and services that might not be purchased are expensive, such as burial vaults or caskets (the rule states it is deceptive to represent that state or local law requires a casket other than an unfinished wood box for direct cremation). The economic impact statement related to this rule is not available.

The rulemaking that became effective in 2001 included requirements for all types of application and time-frames rules for processing the applications. The Board's time-frame rules have had minimal impact on applicants or the Board. The Board has not returned any fees to an applicant due to failure to meet the time-frame rules. The Board has attached the economic impact statement related to the rulemaking that was approved by GRRC as Attachment A.

The rulemaking that became effective on April 3, 2004, included definitions, time-frames, enforcement advisory committee, investigation procedures, informal interview, hearing procedures, and rehearing or review of decision. In the same rulemaking the Board made new rules in Article 2 for reinstatement, application for a cremationist license, renewal of license, registration, and endorsement. The Board also amended its continuing education requirements in Article 4. In its economic impact statement for the rulemaking, the Board projected annual costs for informal interviews would be moderate. In 2010 and in 2011, the Board held two informal interviews, which has decreased from the eight held in 2006. However, there were five hearings in 2010, six in 2011, and five in 2015. An applicant for an initial cremationist's license bears minimal costs for an application and fee. The Board currently licenses 265 cremationists and received 47 cremationist applications in 2015. Consistent with its projections the rules have had minimal economic impact on a licensed funeral establishment and crematory. The Board currently licenses 173 funeral establishment and 54 crematories. The Board's projection for minimal annual costs to funeral director, embalmers, and embalmer's assistants for completion of

continuing education has remained accurate. The economic impact statement related to the rulemaking is attached as Attachment B.

The Board's inspection rule became effective on October 1, 2005. Consistent with its projection, the rule has not imposed any additional costs on the Board, funeral establishment, or crematory. In 2015, the Board conducted 21 crematory inspections and 49 funeral establishment inspections (licensing and complaint). The economic impact statement related to the rulemaking is attached as Attachment C.

In November 2014 the Board amended its Cremation and Cremation Regulation rules. The rules did not add new requirements but were amended because of redundancy with other rules and statutes, conformance with statutes and current standards for crematories, corrections to current statutory authority, and to make them clear, concise, and understandable. Because no new requirements were added and consistent with its projections, the rules have had minimal economic impact on a licensed funeral establishment and crematory. The Board currently licenses six stand-alone crematories and 175 funeral establishments of which 49 have licensed crematories. There has been no increase in costs to consumers due to the rules. The economic impact statement for the rulemaking is attached as Attachment D.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states:**

No one has submitted such an analysis to the Board.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

After reviewing the economic impact statements written at the time of rule promulgation (See paragraph 6) and the current economic impact of the rules, the Board has determined that the rules outweigh the probable costs of the rules and the rules impose the least burden and costs to applicants, licensees, or registrants and there are no less costly alternatives to the rules. However, the Board does intend to amend Articles 3 and 5 of the rules for consistency with statute and for clarity, conciseness.

12. **A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of federal law:**

A.R.S. § 32-1377 states that the Board's rules shall be as stringent as the federal trade commission regulations relating to funeral industry practices. When the Board wrote its rules it

ensured that the rules were as stringent as but no more stringent than the federal trade commission regulations.

13. **For a rule adopted after July 29, 2010 that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with section 41-1037 (General permits; issuance of traditional permit):**

The Board does not issue general permits but issues individual licenses as required by the Board's statutes, to each person who qualifies for licensure, so this provision does not apply the Board's rules. Thus, A.R.S. § 41-1037 does not apply.

Information that is identical within groups of rules

The following information is identical for each group of rules listed. Because this information is the same for each rule in the groups listed:

3. Analysis of effectiveness in achieving the objective:

The following rules effectively achieve their objective:

R4-12-101, R4-12-106, Table 1, R4-12-108, R4-12-109, R4-12-120, R4-12-121, R4-12-123, R4-12-125, R4-12-126, R4-12-201, R4-12-202, R4-12-203, R4-12-204, R4-12-205, R4-12-206, R4-12-207, R4-12-208, R4-12-209, R4-12-210, R4-12-211, R4-12-212, R4-12-413, R4-12-414, R4-12-415, R4-416, R4-12-523, R4-12-612, R4-12-613, R4-12-631, R4-12-633

The following rules are mostly effective for the reasons stated in the individual rule:

R4-12-305, R4-12-541, R4-12-551, R4-12-552, R4-12-561, R4-12-565, Appendix B, Appendix D, Appendix E

The following rules are partially effective for the reasons stated in the individual rule:

R4-12-302, R4-12-303, R4-12-304, R4-12-306, R4-12-545, R4-12-546, R4-12-548, R4-12-554, R4-12-556, R4-12-559

The following rules are not effective for the reasons stated in the individual rule:

R4-12-301, R4-12-307, R4-12-311, R4-12-312,

4. Whether the rule is consistent with statutes or other rules:

All of the rules except the following are consistent with other state and federal rules and statutes as stated in the individual rule:

R4-12-301, R4-12-303, R4-12-311, R4-12-312, R4-12-554, R4-12-559

5. Status of enforcement of the rule

All of the rules, except the following are being enforced as stated in the individual rule:

R4-12-301, R4-12-302, R4-12-303, R4-12-311, R4-12-312, R4-12-556, R4-12-559, Appendix B

6. Analysis of clarity, understandability, and conciseness

The following rules are clear, concise, and understandable:

R4-12-101, R4-12-106, Table 1, R4-12-108, R4-12-109, R4-12-120, R4-12-121, R4-12-123, R4-12-125, R4-12-126, R4-12-201, R4-12-202, R4-12-203, R4-12-204, R4-12-205, R4-12-206, R4-12-207, R4-12-208, R4-12-209, R4-12-210, R4-12-211, R4-12-212, R4-12-413, R4-12-414, R4-12-415, R4-12-416, R4-12-523, R4-12-559, R4-12-612, R4-12-613, R4-12-631, R4-12-633

Appendix B, Appendix D, Appendix E

The following rules are mostly clear, concise, and understandable:

R4-12-305, R4-12-552, R4-12-561, R4-12-565,

The following rules are partially clear, concise, and understandable:

R4-12-306, R4-12-541, R4-12-551, R4-12-556

The following rules are not clear, concise, and understandable:

R4-12-301, R4-12-302, R4-12-303, R4-12-304, R4-12-306, R4-12-307, R4-12-311, R4-12-312, R4-12-544, R4-12-545, R4-12-546, R4-12-548, R4-12-554

10. **If applicable, whether the agency completed the course of action indicated in the agency's previous five-year-review report**

The last five-year-review report was approved by GRRC on February 7, 2012. In the report the Board proposed to amend its crematory rules in Article 6. These rules were amended effective November 9, 2014. The Board intends to amend its Article 3, Regulatory Provisions, and Article 5, Prearranged Funeral Agreements rules and has begun seeking input from those who will be affected by the rules. The Board hopes to amend its Article 3 rules in 2017 and begin working on its Article 5 rules in 2018.

14. **Proposed course of action**

The only rules that need to be amended at this time are in Articles 3 and 5. The Board has identified issues in Article 3, as stated in the individual rules, which need to be addressed. The Board has determined the rules in Article 5 also need to be amended to address issues similar to those in Article 3, a majority of which lack clarity, conciseness, and understandability and has begun seeking input from those who will be affected by the rules. The Board hopes to amend its Article 3 rules in FY2017 and begin working on its Article 5 rules in FY2018. It is uncertain as to the month the action will be taken. No action is necessary for the rest of the rules.

Article 1. General Provisions

R4-12-101. Definitions

2. Objective of the rule

The objective of the rule is to define terms used in the rules to make the rules understandable to the reader, achieve clarity in the rules, and afford consistent interpretation.

R4-12-106. Time-frames for Board Approval

1. Authorization of the rule by existing statutes

A.R.S. § 41-1072 through § 41-1079

2. Objective of the rule

The objective of the rule is to provide an applicant with a timeframe in which the applicant may expect an approval, license, endorsement, or registration to be approved or denied by the Board.

Table 1. Time-frames (in days)

1 Authorization of the rule by existing statutes

A.R.S. § 41-1072 through § 41-1079

Objective of the rule

2. The objective of the rule is to set forth, in table form, the time-frames for the Board to approve or deny an approval, license, endorsement, or registration.

R4-12-108. Fees

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1307(B)(5), 32-1309, 32-1391.16, 39-121.03

Objective of the rule

2. The objective of the rule is to provide notice of the fees for copying, filing an annual trust report, and publishing, distributing, and mailing consumer information pamphlets to a funeral establishment.

R4-12-109. Enforcement Advisement Committee

1. Authorization of the rule by existing statutes

A.R.S. § 32-1307(B)(2)

2. Objective of the rule

The objectives of the rule are to inform persons that the Board may appoint an enforcement advisory committee, set out the membership of the committee, and state the responsibilities of the enforcement advisory committee.

R4-12-120. Inspection Procedures

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1307(A)(5)(b), 32-1383(C)

2. Objective of the rule

The objectives of the rule are to inform applicants, licensees, and the public of the frequency of inspections conducted by the Board to determine whether the licensee meets the requirements of statutes and rules, what an inspection includes, what is required of the Board at an inspection site, and what is required of the Board, applicant, or licensee following an inspection.

R4-12-121. Investigation Procedures

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1307(A)(4), 32-1367

2. Objective of the rule

The objectives of the rule are to inform a licensee or registrant of what is required of the Board after receipt of a complaint, what is required of a licensee or registrant after receipt of the Board's written notice of the complaint, and state that the Board may request additional information of a complainant, licensee, or registrant.

R4-12-123. Informal Interview

1. Authorization of the rule by existing statutes

A.R.S. § 32-1367

2. Objective of the rule

The objective of the rule is to provide the process for conducting an informal interview.

R4-12-125. Hearing Procedures

1. Authorization of the rule by existing statutes

A.R.S. § 32-1367

2. Objective of the rule

The objective of the rule is to provide standards, procedures, and the process for conducting disciplinary hearings.

R4-12-126. Rehearing or Review of Board's Decision

1. Authorization of the rule by existing statutes

A.R.S. § 32-1367(I)

2. Objective of the rule

The objectives of the rule are to describe the procedures for a party to request a rehearing or review after a hearing has been held and explain the Board's process for denying or granting such a request.

Article 2. Licensing Provisions

R4-12-201. Application for a State Equivalent Examination or Embalmer Assistant Practical Examination

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1309(A)(3), 32-1309(A)(4), 32-1309(B)(5), 32-1322, 32-1327

2. Objective of the rule

The objective of the rule is to specify the documents and fees that are required to be submitted to the Board when applying to take a state equivalent examination or embalmer assistant practical examination.

R4-12-202. Application for an Intern, an Embalmer, or a Funeral Director License

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1309(A)(1), 32-1309(A)(2), 32-1309(A)(4), 32-1309(A)(5), 32-1309(C)(1), 32-1309(C)(2), 32-1309(C)(4), 32-1323, 32-1335, 32-1384

2. Objective of the rule

The objective of the rule is to inform an individual of the documents and fees that are required to be submitted when the individual applies for an intern, embalmer, or funeral director license so the Board can determine the qualifications of the applicant.

R4-12-203. Application for an Embalmer's Assistant Registration

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1309(A)(3), 32-1309(C)(3), 32-1325.01, 32-1335

2. Objective of the rule

The objective of the rule is to inform an individual of the documents and fees that are required to be submitted to the Board when the individual applies for an embalmer's assistant registration so the Board can determine the qualifications of the applicant.

R4-12-204. Application for a Funeral Establishment License or an Interim Funeral Establishment Permit

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1309(A)(7), 32-1381, 32-1383, 32-1388(C)

2. Objective of the rule

The objective of the rule is to inform an individual of the documents and fees that are required to be submitted to the Board when the individual applies for an establishment license or interim funeral establishment permit so the Board can determine the qualifications of the applicant..

R4-12-205. Application for a Prearranged Funeral Sales Endorsement

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1309(A)(8), 32-1391.12

2. Objective of the rule

The objective of the rule is to inform an individual of the fee and documents that are required to be submitted to the Board when the individual applies for a prearranged funeral sales endorsement so the Board can determine the qualifications of the applicant.

R4-12-206. Application for a Prearranged Funeral Salesperson Registration

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1309(A)(6), 32-1309(C)(5), 32-1391.14

2. Objective of the rule

The objective of the rule is to inform an individual of the fee and documents that are required to be submitted to the Board when the individual applies for a prearranged funeral sales registration so the Board can determine the qualifications of the applicant.

R4-12-207. Application for a Crematory License

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1309(A)(9), 32-1395

2. Objective of the rule

The objective of the rule is to inform an individual of the fee and documents that are required to be submitted to the Board when the individual applies for a crematory license so the Board can determine the qualifications of the applicant.

R4-12-208. Annual Intern, Apprentice Embalmer, or Embalmer's Assistant Report

1. Authorization of the rule by existing statutes

A.R.S. § 32-1330

2. Objective of the rule

The objective of the rule is to specify what information is needed for the annual report for interns, apprentice embalmers, and embalmers assistants.

R4-12-209. State Equivalent Examination

1. Authorization of the rule by existing statutes

A.R.S. § 32-1327

2. Objective of the rule

The objective of the rule is to inform an individual of the subjects that are tested on the arts and science sections of the state equivalent examination

R4-12-210. Application for a Cremationist License

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1309(A)(10), 32-1309(C)(6), 32-1394, 32-1394.01

2. Objective of the rule

The objective of the rule is to inform an individual of the documents and fees that are required to be submitted to the Board when the individual applies for a cremationist license so the Board can determine the qualifications of the applicant.

R4-12-211. Renewal

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1309(D), 32-1331

2. Objective of the rule

The objective of the rule is to inform an individual of the time, fee, and documents that are required to be submitted to the Board when renewing a license, registration, or endorsement.

R4-12-212. Reinstatement

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1309(E), 32-1331, 32-1391.12, 32-1391.14(C)

2. Objective of the rule

The objective of the rule is to inform an individual of the fees and documents that are required to be submitted to the Board when requesting reinstatement.

Article 3. Regulatory Provisions

R4-12-301. General funeral services requirements

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1307(A)(5)(b), 32-1307(A)(5)(c)

2. Objective of the rule

The objective of the rule is to inform a funeral director, embalmer, funeral establishment, or other person licensed by the Board of the standards of conduct required for the care, transportation, and handling of a decedent and for communications with a decedent's family.

3. Analysis of effectiveness in obtaining objective

The rule is not effective for the reasons stated in paragraphs 4, 5, and 6.

4. Analysis of consistency with state and federal rules and statutes

Most of the rule is consistent with state and federal rules and statutes. Subsection (A)(3) is inconsistent because it states that licensees are required to follow the enumerated statutes and rules "to the extent possible." The Board's statutes do not give licensees this latitude, but require that all of the Board's statutes and rules be followed by licensees.

5. Status of enforcement of the rule

Although the Board relies heavily on subsections (A)(1) and (A)(2), the Board has difficulty enforcing the other subsections because they are capable of multiple interpretations as a result of ambiguous language as stated in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable because it uses passive, ambiguous, and unenforceable language such as “reasonable efforts”, “adequately inform”, and “unnecessary”.

R4-12-302. Deceptive practices prohibited

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1307(A)(5)(b), 32-1307(A)(5)(c)

2. Objective of the rule

The objective of the rule is to provide prohibited practices related to the cost of funeral goods or services to prevent licensees from using deceptive or unfair tactics to entice consumers to choose higher priced goods or services.

3. Analysis of effectiveness in obtaining objective

The rule is partially effective for the reasons stated in paragraph 6.

5. Status of enforcement of the rule

The Board enforces the rule to the extent possible considering the issues raised in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable because the rule’s language does not conform to current rule writing style and format requirements. The rule uses passive and ambiguous language.

R4-12-303. Misrepresentation of legal or cemetery requirements

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1307(A)(5)(b), 32-1307(A)(5)(c)

2. Objective of the rule

The objectives of the rule are to inform of the acts that constitute deceptive practices and state the possible penalties for failure to substantially comply with the rule.

3. Analysis of effectiveness in obtaining objective

The rule is partially effective for the following reasons: R4-12-203(A)(1) is confusing because it appears that a body must be embalmed if burial or cremation does not occur within 24 hours of death or the body is not refrigerated immediately after death. Subsection (A)(2) seems to suggest that an unfinished wooden box is the only container that can be used for cremation, but a container can be made of cardboard or fiberboard. Subsection (B) is ambiguous because it is not clear whether the provision is meant to provide legal standards for malpractice cases in addition to professional incompetence.

4. Analysis of consistency with state and federal rules and statutes

The rule may conflict with A.A.C. R9-19-312, which requires that a body be refrigerated if it is not cremated, buried, or embalmed within 24 hours following death. The rule in subsection (A)(1) is confusing because it seems to require that embalming occur if burial or cremation does not occur within 24 hours of death or if the body is not refrigerated. The rest of the rule is consistent with state and federal rules and statutes.

5. Status of enforcement of the rule

The Board enforces subsection (A)(1) consistent with A.A.C. R9-12-312. The rest of the rule is enforced according to the language of the rule.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable for the reasons stated in paragraphs 3 and 4 and because it does not provided standards for refrigeration or substantial compliance.

R4-12-304. Telephone price disclosure requirement

1. Authorization of the rule by existing statutes

A.R.S. § 32-1375

2. Objective of the rule

The objectives of the rule are to require funeral establishments to provide information about funeral goods and services to a person who requests the information over the telephone and to send a price list to the caller if requested.

3. Analysis of effectiveness in obtaining objective

The rule is partially effective for the reasons stated in paragraph 6 and the following: The rule provides discretion for the postage and handling charge for mailing a funeral price list, but provides no standards for determining the charge.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable because its language does not conform to current rule writing style and format requirements. The first sentence in subsection (A) is awkwardly worded. The rule uses ambiguous language.

R4-12-305. Price lists requirement

1. Authorization of the rule by existing statutes

A.R.S. § 32-1371

2. Objective of the rule

The objective of the rule is to require that licensees and registrants provide a standardized written or printed price list to persons who inquire about funeral arrangements or prices of funeral goods and services.

3. Analysis of effectiveness in obtaining objective

Except as stated in paragraph 6, most of the rule is effective.

6. Analysis of clarity, conciseness, and understandability

Most of the rule is clear, concise and understandable. It is unclear what is meant by “on beginning a discussion” in subsection (A). The incorporation by reference language needs to be updated to meet current rule writing style and format requirements.

R4-12-306. Merchandise price card requirement

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1307(A)(5)(c), 32-1307(A)(5)(d), 32-1372

2. Objective of the rule

The objective of the rule is to provide notice to a consumer about the actual price of specified funeral goods.

3. Analysis of effectiveness in obtaining objective

The rule is partially effective for the reasons stated in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable because it is poorly organized, uses passive language, uses ambiguous language, and does not contain standards for cremation containers.

R4-12-307. Funeral goods and services memorandum

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1307(A)(5)(c), 32-3207(A)(5)(d), 32-1373

2. Objective of the rule

The objective of the rule is to require a funeral establishment, funeral director, or embalmer to provide an itemized written or printed statement of funeral goods and services to each potential purchaser for review by the purchaser before the purchaser enters into a contract with the funeral establishment, funeral director, or embalmer.

3. Analysis of effectiveness in obtaining objective

The rule is not effective for the reasons stated in paragraph 6 and because the relationship between subsections (A), (B), and (C) is unclear. Subsection (A) seems to require the use of Appendices B or C, but subsection (B) seems to allow the information on any contract, statement, or other document. Subsection (C) states that if the statement is used as a final bill, a disclosure must be added to the statement as shown in Appendix C, but there is no disclosure included in Appendix C.

6. Analysis of clarity, conciseness, and understandable

The rule is not clear, concise, and understandable because it does not conform to current rule writing style and format requirements. The rule uses passive voice, is poorly worded, and

incorrectly uses “must” instead of “shall”. In subsection (B), it is unclear what is meant by “information required by this Section” and “clear and conspicuous manner”. The use of the word “memorandum” in the rule and the rule’s title does not reflect that the funeral establishment, funeral director, or embalmer is required to provide an itemized written or printed statement of funeral goods and services to each potential purchaser.

R4-12-311. Minimum embalming requirements

1. Authorization of the rule by existing statutes

A.R.S. § 32-1307(A)(5)(b)

2. Objective of the rule

The objective of the rule is to require that only licensed embalmers or registered apprentice embalmers can embalm human dead bodies and to specify minimum embalming procedures for health and safety reasons and to protect the dignity of the deceased.

3. Analysis of effectiveness in obtaining objective

The rule is not effective for the reasons stated in paragraphs 4, 5, and 6 and because the rule needs to include embalmer’s assistants and to be updated to include current standards of embalming practices, such as universal precautions and blood borne pathogen requirements.

4. Analysis of consistency with state and federal rules and statutes

Subsection (A)(1) is not consistent with A.R.S. § 32-1324 because the statute voids apprentice embalmer registration after July 31, 2002. Additionally, embalmer’s assistants need to be added to the rule. The rest of the rule is consistent.

5. Status of enforcement of the rule

The Board does not enforce the requirements for apprentice embalmers in subsection (A)(1). The Board enforces for full compliance rather than substantial compliance as stated in subsection (D) of the rule. The rest of the rule is enforced.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable because it uses passive language; ambiguous language, such as “to the extent feasible under the circumstances”, “adequate”, “diligent effort”, “substantially removed”; and incorrect references to regulations rather than rules.

R4-12-312. Equipment and sanitation requirements

1. Authorization of the rule by existing statutes

A.R.S. § 32-1382

2. Objective of the rule

The objectives of the rule are to list the instruments, equipment, and supplies that the Board recommends be maintained in a preparation room of a funeral establishment; require a sanitary embalming table; and provide the sanitation requirements for a funeral establishment.

3. Analysis of effectiveness in obtaining objective

The rule is not effective for the reasons stated in paragraphs 4, 5, and 6 and because the Board needs to update the rule to include current standards for instruments, equipment, and supplies that are required in a preparation room.

4. Analysis of consistency with state and federal rules and statutes

The rule is not consistent with A.R.S. § 32-1382 because the statute requires that the Board establish minimum standards for a preparation room. By providing discretionary standards, the Board has not met its statutory mandate.

5. Status of enforcement of the rule

The rule is not being enforced because subsections (A) and (D) are discretionary, not mandatory; there are no standards for “clean and sanitary” in subsection (B); there are no standards for “sanitary” in subsection (C); and there are no standards for “health nuisance or hazard” in subsection (E).

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable because it uses passive, discretionary, and ambiguous language and undefined terms such as “preparation room”, and “health nuisance or hazard”.

Article 4. Continuing Education

R4-12-413. Continuing Education Hours Required

1. Authorization of the rule by existing statutes

A.R.S. § 32-1338

2. Objective of the rule

The objective of the rule is to specify the number of continuing education hours required each calendar year of a funeral director, embalmer, and embalmer’s assistant to apprise them of new techniques or a refresher in the current techniques..

R4-12-414. Waiver of Continuing Education

1. Authorization of the rule by existing statutes

A.R.S. § 32-1338

2. Objective of the rule

The objectives of the rule are to describe the good cause standards for waiver of continuing education and specify the information required by the Board when submitting an application for waiver of continuing education.

R4-12-415. Continuing Education Determinations

1. Authorization of the rule by existing statutes

A.R.S. § 32-1338

2. Objective of the rule

The objective of the rule is to allow a person to submit, before renewal, a request to the Board for determination of whether continuing education meets the requirements in A.R.S. § 32-1338 and R4-12-413.

R4-12-416. Documentation of Continuing Education

1. Authorization of the rule by existing statutes

A.R.S. § 32-1338

2. Objective of the rule

The objective of the rule is to specify the information for continuing education that must be sent to the Board when renewing a license or registration.

Article 5. Prearranged Funeral Agreements

R4-12-523. Surety bond requirements

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1391.01(A), 32-1391.12(A)(4)

2. Objective of the rule

The objectives of the rule are to specify the amount of the surety bond required of a funeral establishment applying for a prearranged funeral sales endorsement and instruct a person to provide the document in Appendix D.

3. Analysis of effectiveness in achieving objective

Although the rule is effective, the Board has determined that a funeral establishment should have a choice of using the surety company's bond form or Appendix D.

R4-12-541. Consumer disclosures

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1391.01(A), 32-1391.02, 32-1391.09

2. Objective of the rule

The objective of the rule is to state the location of the consumer notice required by A.R.S. 32-1391.09.

3. Analysis of effectiveness in achieving objective

Except as stated in paragraph 6, most of the rule is effective.

6. Analysis of clarity, conciseness, and understandability

The rule is partially clear, concise, and understandable because it uses passive language and an incorrect citation to A.R.S. § 32-1391.08 in subsection (A).

R4-12-545. Deceptive, misleading or professionally negligent practices

1. Authorization of the rule by existing statutes

A.R.S. § 32-1391.01

2. Objective of the rule

The objective of the rule is to specify practices that the Board considers deceptive, misleading, or professionally negligent concerning the offer or sale of prearranged funeral arrangements or handling of trust funds.

3. Analysis of effectiveness in achieving objective

The rule is partially effective for the reasons stated in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable because it uses passive language; gender specific language, the incorrect term “will”, and undefined terms.

R4-12-546. Description of casket

1. Authorization of the rule by existing statutes

A.R.S. § 32-1391.01(A)(2)

2. Objective of the rule

The objective of the rule is to state the information required on a prearranged funeral agreement for a casket and what is considered misleading to a customer.

3. Analysis of effectiveness in achieving objective

The rule is partially effective for the reasons stated in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable because it is poorly written, contains undefined terms, and does not state what must be included in a prearranged funeral agreement when a casket is sold.

R4-12-548. Possession of trust account passbook

2. Objective of the rule

The objective of the rule is to provide a purchaser with the option of personally obtaining a copy of a financial institution passbook, certificate of deposit, or similar documentation or authorizing a funeral establishment to maintain the documentation on behalf of the purchaser.

3. Analysis of effectiveness in achieving objective

The rule is partially effective for the reasons stated in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable because it uses gender specific language, contains undefined terms, and does not contain standards for “other similar documentation.”

R4-12-551. Certificate of entitlement

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1391.06(B)

2. Objective of the rule

The objectives of the rule are to specify what information must be on a completed certificate of entitlement and what must occur after a financial institution receives the certificate signed and dated by the owner or responsible funeral director.

3. Analysis of effectiveness in achieving objective

Except as stated in paragraph 6, most of the rule is effective.

6. Analysis of clarity, conciseness, and understandability

The rule is partially clear, concise, and understandable because it does not conform to the numbering and letter system established by the Secretary of State, uses passive language, and incorrectly uses “which” instead of “that.”

R4-12-552. Certificate of performance

1. Authorization of the rule by existing statutes

A.R.S. § 32-1391.08(B)

2. Objective of the rule

The objectives of the rule are to specify the information that must be on the certificate of performance, additional information that must be submitted if the certificate of performance concerns a fixed price prearranged funeral agreement, additional information that must accompany the certificate of performance, and the process for releasing funds after death of the beneficiary.

3. Analysis of effectiveness in achieving objective

Except as stated in paragraph 6, most of the rule is effective.

6. Analysis of clarity, conciseness, and understandability

Although the rule uses passive language, incorrectly uses “which” instead of “that”, and uses an incorrect numbering system, it is mostly clear, concise, and understandable.

R4-12-554. Statement of accrued taxes

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1391.06(C)

2. Objective of the rule

The objective of the rule is to specify what must be submitted by a funeral establishment to a financial institution for accrued taxes for a prearranged funeral trust account.

3. Analysis of effectiveness in achieving objective

The rule is partially effective for the reasons stated in paragraphs 4 and 6.

4. Analysis of consistency with state and federal rules and statutes

Because the rule only allows payment to a taxing authority, the rule is inconsistent with A.R.S. § 32-1391.06(C), which authorizes payment to either the taxing authority or the beneficiary upon a proper showing that the beneficiary has paid the taxes.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable because subsection (4) is poorly written and organized, it is unclear what is meant by “one other employee of the establishment”, it is not clear whether anyone other than the responsible funeral director is necessary to sign the statement required in subsection (4), and the last sentence conflicts with A.R.S. § 32-1391.06(C).

R4-12-556. Notice of trust account transfer

1. Authorization of the rule by existing statutes

A.R.S. § 32-1391.05(C)

2. Objective of the rule

The objectives of the rule are to state when a funeral establishment must notify a participant and the Board of a transfer or change in status of a prearranged funeral trust account and the information that must be provided with the notice.

3. Analysis of effectiveness in achieving objective

The rule is partially effective for the reasons stated in paragraphs 5 and 6.

5. Status of enforcement of the rule

Except for the second and third sentences in subsection (B), the Board enforces the rule.

6. Analysis of clarity, conciseness, and understandability

The rule is partially clear, concise, and understandable because it contains undefined terms and an incorrect citation to A.R.S. § 32-1391.04(C) instead of A.R.S. § 32-1391.05(C).

R4-12-559. Purchaser cancellation requests

1. Authorization of the rule by existing statutes

A.R.S. § 32-1391.07(A)

2. Objective of the rule

The objective of the rule is to specify the information that must be contained in a written request to terminate a prearranged funeral agreement and have trust funds refunded.

3. Analysis of effectiveness in achieving objective

The rule is partially effective for the reasons stated in paragraphs 4 and 5.

4. Analysis of consistency with state and federal rules and statutes

The rule is inconsistent with A.R.S. § 32-1391.07(A) because the statute requires a funeral establishment to refund the trust funds within five business days, while the rule requires five days.

5. Status of enforcement of the rule

The Board enforces the rule according to statute.

R4-12-561. Annual report format

1. Authorization of the rule by existing statutes

A.R.S. § 32-1391.16

2. Objective of the rule

The objective of the rule is to specify the information that must be submitted on the annual report required by A.R.S. 32-1391.15 for funeral establishments that do and do not offer to sell prearranged funerals on or after January 1, 1985.

3. Analysis of effectiveness in achieving objective

Except as stated in paragraph 6, most of the rule is effective.

6. Analysis of clarity, conciseness, and understandability

Although the rule incorrectly cites A.R.S. § 32-1391.15 as its implementing statute and uses the superfluous word “concerning”, it is mostly clear, concise, and understandable.

R4-12-565. Records retention requirement

1. Authorization of the rule by existing statutes

A.R.S. § 32-1391.01(A)(3)

2. Objective of the rule

The objectives of the rule are to specify the prearranged funeral agreement documents that must be kept by a funeral establishment for inspection purposes and the length of time the documents must be kept.

3. Analysis of effectiveness in achieving objective

Except as stated in paragraph 6, most of the rule is effective.

6. Analysis of clarity, conciseness, and understandability

Although subsection (3) of the rule is grammatically incorrect, the rule is mostly clear, concise, and understandable.

Appendix B. Statement of Goods and Services Selected

1. Authorization of the rule by existing statutes
A.R.S. § 32-1373
2. Objective of the rule
The objective of the rule is to provide a form that itemizes the goods and services purchased by an individual, which is to be used as a final bill by a funeral establishment.
3. Analysis of effectiveness in achieving objective
Except for the phrase “statement not used as a final bill”, the appendix is effective. The form may actually be used as a final bill.
5. Status of enforcement of the rule
Except for the phrase “statement not used as a final bill”, the appendix is enforced.

Appendix D. Prearranged Funeral Endorsement Bond

1. Authorization of the rule by existing statutes
A.R.S. §§ 32-1391.01(A)(4), 32-1391.12
2. Objective of the rule
The objective of appendix is to establish a form for a surety bond that is to be submitted to the Board with a prearranged funeral sales endorsement application.

Appendix E. Annual Report

1. Authorization of the rule by existing statutes
A.R.S. § 32-1391.16
2. Objective of the rule
The objective of the appendix is to establish a form for the annual report required by A.R.S. § 32-1391.16.

Article 6. Crematory and Cremation Regulation

R4-12-612. Crematory requirements

1. Authorization of the rule by existing statutes
A.R.S. § 32-1399
2. Objective of the rule
The objective of the rule is to specify the standards to keep a crematory clean, and establish requirement for human remains that are not embalmed.

R4-12-613. Requirements for a funeral establishment that provides for cremation

1. Authorization of the rule by existing statutes
A.R.S. § 32-1399
2. Objective of the rule

The objective of the rule is to require the designation of a responsible cremationist and state the requirements for a funeral establishment that provides for cremation.

R4-12-631. Records requirements for crematories and funeral establishments that provide for cremation

1. Authorization of the rule by existing statutes

A.R.S. § 32-1399(11)

2. Objective of the rule

The objective of the rule is to specify what is required of a responsible cremationist or funeral establishment for records as required by A.R.S. § 32-1399(11).

R4-12-633. Disposition of records

1. Authorization of the rule by existing statutes

A.R.S. § 32-1399(11)

2. Objective of the rule

The objective of the rule is to specify what is required of a responsible cremationist or funeral establishment when a crematory or funeral establishment that provides for cremations is sold or ceases operations.